

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID BENAVIDEZ, ET AL.,

Plaintiffs,

vs.

CIV No. 97-1535 MV/WWD

DAYTON HUDSON CORPORATION, ET AL.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court upon Plaintiff's motion for Enlargement of Time to Conduct Discovery [Docket #48] filed October 20, 1998. The motion was filed the day before the discovery period was set to end. It followed the withdrawal of Stephen E. McIlwain, Esquire, as Plaintiffs' counsel allowed in an Order entered September 9, 1998, and the substitution of Will Ferguson and Associates as counsel for Plaintiffs. On October 28, 1998, the Court held David Benavidez, Jr. in contempt for failing to appear at his deposition. There have also been other instances of obstruction of the discovery process by members of the Benavidez family. A settlement conference before the undersigned was held July 1, 1998. From my observations it appeared that David Benavidez, Sr., a named plaintiff and the father of Anthony Benavidez, was in control of the prosecution of the law suit and that his attorney had little or no input concerning decisions in the law suit. Plaintiffs have failed to show that there is a plausible reason for their failure to conduct discovery in the period allowed. Plaintiffs and their family have acted in ways which have impeded discovery by Defendants. There is no good cause for granting such an extension nor do I find that the extension should be granted based on equitable

considerations. Plaintiffs' Motion for Enlargement of Time to Conduct Discovery should be DENIED.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE